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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,012	11/26/2003	John Fleming	P06633US1-5202	9557
34082	7590	08/23/2005	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			LOPEZ, FRANK D	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/723,012	FLEMING ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	F. Daniel Lopez	3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-11,13-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4-7,29-33 and 35 is/are allowed.
- 6) Claim(s) 1,8-13,20-22 and 27 is/are rejected.
- 7) Claim(s) 2,3,14-19,23-26 and 28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

Applicant's arguments filed June 16, 2005, have been fully considered but they are not deemed to be persuasive.

Applicant argues that since Moya doesn't disclose two yokes with a stop for each (because Moya only discloses a stop for a single cylindrical drum), the combination with Folsom et al would not result with a stop for each of two yokes. Applicant is mistaken. One of ordinary skill in the hydrostatic transmission art would recognize that the teaching of Moya can be applied to each of the two yokes of Folsom et al, since each of the two yokes of Folsom et al have a similar variable displacement structure.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 1-3 and 8 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 10-11 "controlled power means for pivoting the yokes and supplying pressurized fluid to the hydrostatic power units" is considered a proper 112 6<sup>th</sup> means plus function limitation, except that there is nothing in the specification which defines what elements correspond to this means. Although applicant has explained in the arguments what elements correspond to this means, the specification must define what elements correspond to this means.

Claims not specifically mentioned are indefinite, since they depend from claim 1.

***Claim Rejections - 35 USC § 102***

Claims 9-11 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dowty et al (yokes 22 and 42 have complementary surfaces which are shown of fig 3 as interacting to minimize space).

***Claim Rejections - 35 USC § 103***

Claims 1, 8, 20-22 and 27 are rejected under 35 U.S.C. § 103 as being unpatentable over Folsom et al in view of Moya. Folsom et al discloses a bent axis hydrostatic unit (e.g. fig 60-71) comprising two yokes (342, 344) pivotally mounted to pivot on a frame in intersecting paths, a respective hydrostatic unit (330M, 330P) on each yoke and operatively connected to an output shaft (140, 200); a controlled power means including a control housing (108) for pivoting the yokes and a fluid manifold (335) which serves as a conduit for high pressure fluid between the hydrostatic units; wherein the yokes have complementary surfaces (tapers on 342) to minimize space occupied by yokes when the complementary surfaces are in closely spaced relation; but does not disclose that there is a stop means on the yokes and frame to limit the pivotal movement of the yokes; or that the yokes can pivot between minus 45 degree and plus 45 degrees, and including a position at minus 15 degrees.

Moya teaches, for a bent axis hydrostatic unit comprising a yoke (18) pivotally mounted to pivot on a frame (e.g. 2), a hydrostatic unit (8) on the yoke and operatively connected to an output shaft (3); that there is a stop means (edge of 18, 24a) on the yokes and frame, for the purpose of adjustably limiting the pivotal movement of the yokes.

Since Folsom et al and Moya are both from the same field of endeavor, the purpose disclosed by Moya would have been recognized in the pertinent art of Folsom et al. It would have been obvious at the time the invention was made to one having ordinary skill in the art to include stop means on the yokes and frame of Folsom et al, as taught by Moya, for the purpose of adjustably limiting the pivotal movement of the yokes.

***Conclusion***

Claims 4-7, 29-33 and 35 are allowed.

Claims 2, 3, 14-19, 23-26, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3745

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is (571)-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
August 22, 2005